

Appl. No. : 10/776,083
Filed : February 11, 2004

REMARKS

Claims 1-22 and 103-116, and 124 are now pending in the present application. Claims 2, 5, 13, and 103 have been amended. The claims set forth above include markings to show the changes made by way of the present amendment, deletions being in ~~strikeout~~ or ~~[[double brackets]]~~ and additions being underlined.

In response to the Final Office Action mailed March 12, 2009, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments.

Claim 124 is Supported in the Present Application

Claim 124 stands rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. In particular, the Examiner asserts that the claim limitation of “wherein the conversion device does not include a hose attached to the sidewall of the basin when the conversion device is in the first state” is not supported by the specification. Applicant respectfully traverses the rejection.

The specification discloses that certain embodiments of the basin achieve the dual goals of providing a conventional basin and one that can be modified to be actively drained by the conversion device. *See, e.g.*, paragraphs [0013] and [0015]. When the conversion device is in the first state, the basin can be used as a conventional non-draining basin.

Certain embodiments of the conversion device do not include a hose attached to the sidewall of the basin. For example, a cannula or a recess can be a member of a conversion device that does not include a hose attached when used in the first state. *See, e.g.* Figures 2G, 2I, 2J, 2G, and 5. Other conversion devices which incorporate peel-off seals, plugs, and corks also do not include hoses attached when used in the first state. *See, e.g.*, Figures 5, 2B, 2C, and 2D.

In certain embodiments, to modify a conversion device to a second state of active draining, a hose is then attached to the sidewall of the basin. *See, e.g.*, paragraphs [0113], [0114], [0120], [0124], and [0154]. Since a hose is attached to the sidewall of the basin in the second state, certain embodiments have conversion devices that do not include a hose attached to the sidewall of the basin when in the first state.

Appl. No. : 10/776,083
Filed : February 11, 2004

For at least the foregoing reasons, Applicant respectfully requests the Examiner withdraw the rejection of Claim 124 under 35 U.S.C. § 112.

No New Matter Was Added to the Specification

The specification stands rejected under 35 U.S.C. § 132(a) as introducing new matter into the disclosure. In particular, Claim 124 was added to disclose a conversion device that does not include a hose attached to the sidewall of the basin when the conversion device is in the first state. For at least the same reasons aforementioned with respect to Claim 124, Applicant respectfully requests the Examiner withdraw the rejection of the specification under 35 U.S.C. § 132(a)

Holloway Does Not Disclose the Medical Kit Recited By Amended Claims 2, 4, 13, 14, 16-22, 103-106, 108-110, and 112-116

Claims 2, 4, 13, 14, 16-22, 103-106, 108-110, and 112-116 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Holloway *et al.* (U.S. Patent No. 5,381,562) (“Holloway”). Applicant respectfully traverses the present rejection. However, to expedite the prosecution of the present Application, Applicant has amended Claims 2, 13, and 103. Applicant submits that no new matter has been added and that the amendments are supported in the application. *See, e.g.* paragraph [0005], [0013], and [0015]. Applicant also expressly reserves the right to further prosecute the original versions through continuation practice.

Claims 2 and 103

Amended Claim 2 recites a medical kit comprising,

at least one **basin configured to be stackable in a leak proof state** with a sidewall portion and a bottom wall portion; and

a conversion device on at least one of the sidewall portion and the bottom wall portion, the conversion device configured to confine **all** fluid within the sidewall and bottom wall portions of the basin in the leak proof state and to form a drain in a second state, through which fluid inside the basin can be drained through at least one of the sidewall and bottom wall portions.

(Emphasis added).

Similarly, amended Claim 103 recites:

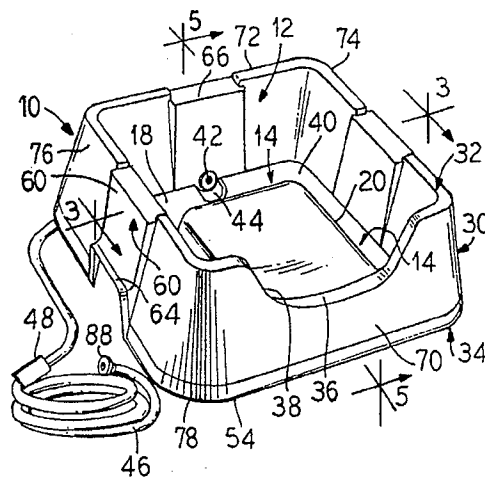
A medical **basin configured to be stackable in a leak proof state** for collecting fluid during irrigation of a wound on a human anatomy comprising:

at least one sidewall and a bottom, the at least one sidewall and the bottom defining a cavity and

at least one convertible portion in at least one of the bottom and the at least one sidewall, wherein the at least one convertible portion is configured to confine **all** fluid within the basin by inhibiting fluid from passing through the at least one sidewall and bottom in the leak proof state and define an aperture through the at least one sidewall and bottom when the at least one convertible portion is modified.”

(Emphasis added)

Holloway discloses a basin having a contoured bottom and a substantially continuous sidewall. The basin in Holloway has an outlet in fluid communication with a channel formed in the bottom of the basin. The outlet is connected with a drainage system disposed outside the basin. The drainage system is releasably connected to the outlet, which continuously permits fluid to pass there through. See Figure 1 from Holloway, reproduced below.



However, Holloway **fails to teach a device that can be and includes all of the components required for conversion between a normal basin and a basin that has a drain.** Rather, as shown in Figure 1 of Holloway, the device in Holloway includes a hole in the basin that has a hose attached thereto.

Claims 2 and 103 are directed to medical kits or basins with **dual functionality** e.g., the basins of Claims 2 and 103 can be used as a conventional basin, **and** it can be conveniently converted into a basin that can be actively drained with suction. Conventional basins are both stackable (*see, e.g.*, paragraph [0005]) and leak proof.

As recited in amended Claims 2 and 103, when the basin is used as a conventional basin, it is configured to be stackable in a leak proof state. This is different than the basin in Holloway.

Appl. No. : 10/776,083
Filed : February 11, 2004

Holloway *cannot be stackable in a leak proof state*. As the Examiner points out on page 7 of the Office Action, for Holloway to confine fluid in the basin and not in the hose, the clamp must be fitted directly next to the basin. However, a basin with a clamp and hose next to the basin sidewall cannot be stackable at the same time.

Therefore, Holloway fails to disclose or suggest the basins recited in Claims 2 and 103. For at least this reason, Applicant respectfully requests the Examiner withdraw the rejection of Claims 2 and 103 and pass these claims to allowance.

Additionally, Applicant submits that Claims 4, 17-22, 104-106, 108-110, and 112-116 also define over the cited reference, not only because they depend from Claim 2 or 103, but also on their own merit. Accordingly, Applicant respectfully requests the Examiner withdraw the rejection of Claims 4, 17-22, 104-106, 108-110, and 112-116 and pass these claims to allowance.

Claim 13

Amended Claim 13 recites,

A medical kit comprising:

at least one **basin configured to be stackable in a leak proof state** with a sidewall portion and a bottom wall portion; and

a tube having a first end disposed at an **upper edge** of the sidewall portion and a second end disposed at the bottom of the sidewall portion.

(Emphasis added)

As mentioned above with respect to Claims 2 and 103, Holloway does not disclose a basin configured to be stackable in a leak proof state. In addition, Holloway does not disclose or suggest a tube having a first end disposed at an upper **edge** of the sidewall portion and a second end disposed at the bottom of the sidewall portion. Rather, Holloway only discloses an outlet with a first end in fluid communication with the bottom of the basin and the other end outside the sidewall of the basin, at substantially the same height.

On page 7 of the Office Action, the Examiner asserts that “the upper edge may be upper as compared to the bottommost portion and the bottom may be considered such as related to an upper portion.” However, the claim limitation in Claim 5 recites “a tube having a first end disposed at an upper **edge** of the sidewall.” Even if one end of the tube was “upper” relative to the end disposed at the bottom, it is not disposed at an upper **edge**, but rather at an upper **side**.

Appl. No. : 10/776,083
Filed : February 11, 2004

Accordingly, Holloway does not anticipate Claim 13. Applicant respectfully requests the Examiner withdraw the rejection of Claim 13 and pass this claim to allowance.

Additionally, Applicant submits that Claims 14 and 16 also define over the cited reference, not only because they depend from Claim 13, but also on their own merit. Accordingly, Applicant respectfully requests the Examiner withdraw the rejection of Claims 14 and 16 and pass these claims to allowance.

Holloway in view of Robinson Does Not Render Obvious the Medical Kit Recited By Amended Claims 5 and 124

Claims 5 and 124 stand rejected under 35 U.S.C. § 103 as being unpatentable over Holloway in view of Robinson (U.S. Patent No. 3,407,957) ("Robinson"). Applicant respectfully traverses the present rejection. However, to expedite the prosecution of the present application, Applicant has amended Claim 5 and 124. Applicant submits that no new matter has been added and that the amendments are supported in the application. Applicant also expressly reserves the right to further prosecute the original versions through continuation practice.

Claim 5

Amended Claim 5 recites, a medical kit comprising:

at least one basin with an open upper portion, a sidewall portion and a bottom wall portion; and
a convertible portion comprising a frangible portion of the basin, the convertible portion is configured to provide a substantially leak-proof barrier on at least one of the sidewall portion and the bottom wall portion in a first state and to form a drain in a second state, through which fluid inside the basin can be drained.

(Emphasis added)

Holloway is discussed above. Robinson discloses a cup-like container closure with a tamper resistant means for packaging food, beverages, and other merchandise. The tamper resistant means is especially suitable for sealing the top of the container for vacuum packaging, for hermetically sealing, or for avoiding contamination of foreign material. Col.1, ll. 23-49.

The Examiner asserts on page 6 of the Office Action, that Holloway teaches Claim 5 except for a convertible portion comprising a frangible portion. Also on page 6, the Examiner notes that it would have been obvious to modify the closure of Holloway with a frangible closure as taught by Robinson "because the use of a frangible closure provides a tightly sealed closure as well as one that allows for easy accessibility and is inexpensive to manufacture."

Appl. No. : **10/776,083**
Filed : **February 11, 2004**

However, persons skilled in the art would not combine Robinson with Holloway because one would not look to provide a tamper resistant seal and closure on the open upper portion of a medical basin. In addition, persons skilled in the art would not look to provide a tamper resistant seal and closure on the convertible portion of a sidewall of a basin that has an open upper portion. With an open upper portion, the Robinson seal could not function as a vacuum seal, a hermetic seal, or a seal with avoids contamination as described in Robinson and mentioned above.

Accordingly, Holloway in view of Robinson does not render Claim 5 obvious. Applicant respectfully requests the Examiner withdraw the rejection of Claim 5 and pass this claim to allowance.

Claim 124

Claim 124 depends from Amended Claim 2. As mentioned above with respect to Claim 2, Holloway does not teach a basin configured to be stackable in a leak proof state because a basin with a clamp and hose next to the basin sidewall cannot be stackable at the same time. In addition, as mentioned above with respect to Claim 5, persons having skill in the art would not combine Holloway and Robinson.

Accordingly, Holloway in view of Robinson does not render Claim 124 obvious. Applicant respectfully requests the Examiner withdraw the rejection of Claim 124 and pass this claim to allowance.

Appl. No. : **10/776,083**
Filed : **February 11, 2004**

SUMMARY

For the reasons described above, Applicant respectfully request the Examiner withdraw the rejection of the claims and pass Claims 1-22 and 103-116 and 124 to allowance.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 12, 2009

By: /Michael Guiliana/

Michael A. Guiliana
Registration No. 42,611
Attorney of Record
2040 Main St.
Fourteenth Floor
Irvine, CA 92614
Customer No. 20,995
(949) 760-0404

7272899
061109